

### REMARKS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested. After entry of the foregoing amendment, Claims 1-7, 9-19, 21-24, and 26-28 remain pending in the present application. No new matter has been added.

By way of summary, the Office Action presented the following issues: the Office did not address Applicants' remarks in the Amendment filed September 3, 2009, regarding the Form PTO 1449 filed July 13, 2005; Claims 1-6, 16-19, 21, and 23-24 were rejected under 35 U.S.C. § 102(e) as anticipated by Gavish (U.S. Patent Application Publ'n No. 2004/0116784); Claims 1-4, 16, and 21-22 were rejected under 35 U.S.C. § 102(b) as anticipated by Tacklind et al. (U.S. Patent No. 5,626,144, hereinafter "Tacklind"); and Claims 7-15 and 22 were allowed.<sup>1</sup>

### FORM PTO 1449

**The Office did not address Applicants' remarks in the Amendment filed September 3, 2009, regarding the Form PTO 1449 filed July 13, 2005. Attention is directed to pages 11-12 of the Amendment filed September 3, 2009.**

### REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-6, 16-19, 21, and 23-24 were rejected under 35 U.S.C. § 102(e) as anticipated by Gavish. Claims 1-4, 16, and 21-22 were rejected under 35 U.S.C. § 102(b) as anticipated by Tacklind. In light of the several grounds of rejection on the merits, independent Claims 1, 16-19, 21, and 23-24 have been amended to clarify the claimed inventions and to thereby more clearly patentably define over the applied references.

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<sup>1</sup> The Office Action included at page 6 a statement of reasons for the indication of allowable subject matter. As Claims 7 and 22 do not recite "the detection delaying the timing of reproduction by the duration of the low energy interval," Applicants assume that Claims 7 and 22 were allowed for independent reasons.

Amended Claim 1 recites a data reproduction instructing apparatus including, in part,

detecting means for detecting at least one of a peak and  
a zero-cross point of organic information; and

instructing means for outputting a signal indicating a  
timing of the at least one of the peak and the zero-cross point,  
for receiving a discrete input based on the timing of the at least  
one of the peak and the zero-cross point, and for starting a  
reproduction of said data upon said discrete input.

Applicants submit that Gavish and Tacklind fail to disclose or suggest those features.

Gavish concerns “parameters of the user that are altered by a pathology or other phenomenon of user 22 that is being treated by system 20,” such as “respiration parameters (e.g., peak air flow) . . . .”<sup>2</sup> Gavish does not disclose features of the peak air flow commensurate with the features of the peak of the organic information recited in amended Claim 1. It is respectfully submitted that Gavish fails to disclose or suggest “instructing means for outputting a signal indicating a timing of the at least one of the peak and the zero-cross point, [and] for receiving a discrete input based on the timing of the at least one of the peak and the zero-cross point,” as recited in amended Claim 1.

Tacklind concerns a “peak flow meter [that] measures Peak Expiratory Flow (PEP), defined as the maximum rate at which an individual can expel air from the lungs, using maximal effort from full inhalation.”<sup>3</sup> The mere description in Tacklind of a maximum expelling rate does not disclose or suggest to the skilled artisan the features of the peak of the organic information recited in amended Claim 1. Tacklind simply does not disclose or suggest “instructing means for outputting a signal indicating a timing of the at least one of the peak and the zero-cross point, [and] for receiving a discrete input based on the timing of the at least one of the peak and the zero-cross point,” as recited in amended Claim 1.

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<sup>2</sup> Gavish, para. [0166].

<sup>3</sup> Tacklind, col. 2, ll. 17-20.

It is accordingly submitted that independent Claim 1 (and all associated dependent claims) patentably distinguish over Gavish and Tacklind for at least the foregoing reasons.

It is additionally submitted that independent Claims 16-19, 21, and 23-24 patentably distinguish over Gavish and Tacklind at least for reasons analogous to those set forth above with regard to Claim 1.

#### NEW CLAIMS

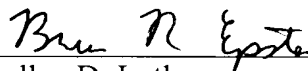
Applicants have added new Claims 26-28 and respectfully submit that the new claims do not add new matter. In particular, it is submitted that dependent Claim 26 finds support at least in Claim 20, that dependent Claim 27 finds support at least in Claim 25, and that dependent Claim 28 finds support at least in Claim 3. It is further submitted that new Claims 26-28 are allowable at least by virtue of their dependencies.

CONCLUSION

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the present application is patentably distinguished over the cited art and is in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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